

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

RICHARD PAUL GOODWIN and
TAMMY LARAINÉ GOODWIN,

Debtors.

No. 03-22048
Chapter 7

FIRST TENNESSEE BANK
NATIONAL ASSOCIATION,

Plaintiff,

vs.

Adv. Pro. No. 03-2054

RICHARD PAUL GOODWIN and
TAMMY LARAINÉ GOODWIN,

Defendants.

O R D E R

This adversary proceeding is before the court on a motion for summary judgment filed by debtor Tammy Goodwin on October 15, 2003, and the plaintiff's response in opposition thereto filed on October 31, 2003. The plaintiff alleges in its complaint that it was induced to accept the debtors' guaranties of a \$1.6 million loan to General Creation, LLC based on a written statement of their financial condition which contained materially false representations concerning their outstanding financial obligations upon which the plaintiff reasonably relied. Ms. Goodwin contends in her motion that the plaintiff "has failed to state a cause of action against her" because "the only financial statement issued prior to the ... loan ... was

signed only by R. Goodwin."

11 U.S.C. § 523(a)(2)(B) does not require that a debtor sign the statement respecting its financial condition, only that the statement be "in writing," as opposed to an oral representation, which the debtor "caused to be made or published with intent to deceive." See, e.g., *Commerce Bank v. Hammitt*, 289 B.R. 681, 688 (Bankr. C.D. Ill. 2001)(cause of action under § 523(a)(2)(b) established where debtor did not sign joint financial statement, but allowed joint debtor husband to sign and submit it to creditor). A copy of the purported financial statement at issue is attached to the debtors' answer and lists both of their names and social security numbers. Although the statement is only signed by Mr. Goodwin, the question remains as to whether Ms. Goodwin adopted or affirmed the written statement in some manner such that it is deemed to have been "made or published" by her. Because the court has no evidence before it on this factual question, just the pleadings themselves which raise it, summary judgment at this stage is inappropriate. Accordingly, the motion is denied.

SO ORDERED.

ENTER: February 5, 2004

BY THE COURT

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE